

## Calendar No. 997

110TH CONGRESS  
2D SESSION**S. 3065**

To establish the Dominguez-Escalante National Conservation Area and the  
Dominguez Canyon Wilderness Area.

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IN THE SENATE OF THE UNITED STATES

MAY 22, 2008

Mr. SALAZAR introduced the following bill; which was read twice and referred  
to the Committee on Energy and Natural Resources

SEPTEMBER 16, 2008

Reported by Mr. BINGAMAN, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italie*]

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**A BILL**

To establish the Dominguez-Escalante National Conservation  
Area and the Dominguez Canyon Wilderness Area.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “~~Dominguez-Escalante~~  
5       National Conservation Area and Dominguez Canyon Wil-  
6       derness Area Act”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) certain areas located in Mesa, Montrose,  
4 and Delta Counties, Colorado, should be protected  
5 and enhanced for the benefit and enjoyment of  
6 present and future generations;

7 (2) the land that comprises the Dominguez-  
8 Escalante National Conservation Area established by  
9 section 4(a)(1)—

10 (A) contains unique and valuable paleon-  
11 tological, natural, and wildlife components,  
12 which are enhanced by the rural western setting  
13 of the area;

14 (B) provides extensive opportunities for  
15 recreational activities, including along the na-  
16 tionally renowned Tabeguache Trail;

17 (C) is publicly used for hiking, bicycling,  
18 camping, and grazing; and

19 (D) is worthy of additional protection as a  
20 national conservation area; and

21 (3) the land that comprises the Dominguez  
22 Canyon Wilderness Area designated by section  
23 5(a)—

24 (A) has wilderness value; and

1           (B) offers unique geological, archae-  
 2           ological, paleontological, fish and wildlife, ripar-  
 3           ian, water, scientific, and recreational resources.

4       (b) PURPOSE.—The purpose of this Act is to estab-  
 5       lish the Dominguez-Escalante National Conservation Area  
 6       and the Dominguez Canyon Wilderness Area in the State,  
 7       to be administered as part of the National Landscape Con-  
 8       servation System to conserve and protect for the benefit  
 9       and enjoyment of present and future generations—

10           (1) the unique and nationally important values  
 11           of certain public land in the Mesa, Montrose, and  
 12           Delta Counties, Colorado (including the geological,  
 13           cultural, archaeological, paleontological, natural, sci-  
 14           entific, recreational, environmental, biological, wil-  
 15           derness, wildlife, riparian, historical, educational,  
 16           and scenic resources of the public land); and

17           (2) the water resources of area streams, based  
 18           on seasonally available flows, that are necessary to  
 19           support aquatic, riparian, and terrestrial species and  
 20           communities.

21 **SEC. 3. DEFINITIONS.**

22       In this Act:

23           (1) CONSERVATION AREA.—The term “Con-  
 24           servation Area” means the Dominguez-Escalante

1 National Conservation Area established by section  
2 4(a)(1).

3 ~~(2) COUNCIL.~~—The term “Council” means the  
4 Dominguez-Escalante National Conservation Area  
5 Advisory Council established under section 9.

6 ~~(3) MANAGEMENT PLAN.~~—The term “manage-  
7 ment plan” means the management plan developed  
8 under section 8.

9 ~~(4) MAP.~~—The term “Map” means the map en-  
10 titled “Dominguez-Escalante National Conservation  
11 Area” and dated May 22, 2008.

12 ~~(5) SECRETARY.~~—The term “Secretary” means  
13 the Secretary of the Interior, acting through the Di-  
14 rector of the Bureau of Land Management.

15 ~~(6) STATE.~~—The term “State” means the State  
16 of Colorado.

17 ~~(7) WILDERNESS.~~—The term “Wilderness”  
18 means the Dominguez Canyon Wilderness Area des-  
19 ignated by section 5(a).

20 **SEC. 4. DOMINGUEZ-ESCALANTE NATIONAL CONSERVA-**  
21 **TION AREA.**

22 ~~(a) ESTABLISHMENT.~~—

23 ~~(1) IN GENERAL.~~—There is established the  
24 Dominguez-Escalante National Conservation Area in  
25 the State.

1           ~~(2) AREA INCLUDED.—~~The Conservation Area  
 2       shall consist of approximately 210,677 acres of pub-  
 3       lic land, as generally depicted on the Map.

4       ~~(b) MANAGEMENT.—~~

5           ~~(1) IN GENERAL.—~~The Secretary shall manage  
 6       the Conservation Area—

7           ~~(A)~~ as a component of the National Land-  
 8       scape Conservation System;

9           ~~(B)~~ in a manner that conserves, protects,  
 10      and enhances the resources of the Conservation  
 11      Area described in section 2(b); and

12          ~~(C)~~ in accordance with—

13           ~~(i)~~ the Federal Land Policy and Man-  
 14      agement Act of 1976 (43 U.S.C. 1701 et  
 15      seq.);

16           ~~(ii)~~ this Act; and

17           ~~(iii)~~ any other applicable laws.

18       ~~(2) USES.—~~

19           ~~(A) IN GENERAL.—~~The Secretary shall  
 20      allow only such uses of the Conservation Area  
 21      as the Secretary determines would further the  
 22      purposes for which the Conservation Area is es-  
 23      tablished.

24          ~~(B) USE OF MOTORIZED VEHICLES.—~~

(i) ~~IN GENERAL.~~—Except as provided in clause (ii), use of motorized vehicles in the Conservation Area shall be allowed—

(I) before the effective date of the management plan, only on roads and trails designated for use of motor vehicles in the management plan that applies on the date of the enactment of this Act to the public land in the Conservation Area; and

(II) after the effective date of the management plan, only on roads and trails designated in the management plan for the use of motor vehicles.

(ii) ~~ADMINISTRATIVE AND EMERGENCY RESPONSE USE.~~—Clause (i) shall not limit the use of motor vehicles in the Conservation Area for administrative purposes or to respond to an emergency.

**SEC. 5. DOMINGUEZ CANYON WILDERNESS AREA.**

(a) ~~IN GENERAL.~~—Approximately 66,280 acres of public land in Mesa, Montrose, and Delta Counties, Colorado, as generally depicted on the Map, are designated as wilderness and as a component of the National Wilderness

1 Preservation System, to be known as the “Dominguez  
2 Canyon Wilderness Area”.

3 (b) ADMINISTRATION OF WILDERNESS.—Subject to  
4 valid existing rights, land designated as wilderness by this  
5 Act shall be managed by the Secretary in accordance with  
6 the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act,  
7 except that any reference in the Wilderness Act to the ef-  
8 fective date of the Wilderness Act shall be considered to  
9 be a reference to the date of enactment of this Act.

10 **SEC. 6. MAPS AND LEGAL DESCRIPTIONS.**

11 (a) IN GENERAL.—As soon as practicable after the  
12 date of enactment of this Act, the Secretary shall submit  
13 to Congress—

14 (1) a copy of the Map; and

15 (2) legal descriptions of the Conservation Area  
16 and the Wilderness.

17 (b) FORCE AND EFFECT.—The Map and legal de-  
18 scriptions submitted under subsection (a) shall have the  
19 same force and effect as if included in this Act, except  
20 that the Secretary may correct clerical and typographical  
21 errors in the Map and legal descriptions.

22 (c) PUBLIC AVAILABILITY.—The Map and legal de-  
23 scription of the Conservation Area shall be available for  
24 public inspection in the appropriate offices of the Bureau  
25 of Land Management.

1 **SEC. 7. MANAGEMENT OF CONSERVATION AREA AND WIL-**  
2 **DERNESS.**

3 (a) ~~WITHDRAWALS.~~—Subject to valid existing rights,  
4 all Federal land within the Conservation Area and the Wil-  
5 derness and all land and interests in land acquired by the  
6 United States for the Conservation Area or the Wilderness  
7 after the date of enactment of this Act is withdrawn  
8 from—

9 (1) all forms of entry, appropriation, or disposal  
10 under the public land laws;

11 (2) location, entry, and patent under the mining  
12 laws; and

13 (3) operation of the mineral leasing, mineral  
14 materials, and geothermal leasing laws.

15 (b) ~~GRAZING.~~—

16 (1) ~~IN GENERAL.~~—Except as provided in para-  
17 graph (2), the Secretary shall issue and administer  
18 any grazing leases or permits in the Conservation  
19 Area in accordance with the laws (including regula-  
20 tions) and Executive orders applicable to the  
21 issuance and administration of leases and permits on  
22 other land under the jurisdiction of the Bureau of  
23 Land Management.

24 (2) ~~GRAZING IN WILDERNESS.~~—The grazing of  
25 livestock in areas of the Wilderness that are admin-  
26 istered by the Bureau of Land Management and in



1 which grazing is established as of the date of enact-  
 2 ment of this Act shall be allowed to continue—

3 ~~(A) subject to any reasonable regulations;~~  
 4 ~~policies; and practices that the Secretary deter-~~  
 5 ~~mines to be necessary; and~~

6 ~~(B) consistent with—~~

7 ~~(i) section 4(d)(4) of the Wilderness~~  
 8 ~~Act (16 U.S.C. 1133(d)(4)); and~~

9 ~~(ii) the guidelines set forth in Appen-~~  
 10 ~~dix A of House Report 101-405.~~

11 ~~(c) NO BUFFER ZONES.—~~

12 ~~(1) IN GENERAL.—Nothing in this Act creates~~  
 13 ~~a protective perimeter or buffer zone around the~~  
 14 ~~Conservation Area.~~

15 ~~(2) ACTIVITIES OUTSIDE CONSERVATION~~  
 16 ~~AREA.—The fact that an activity or use on land out-~~  
 17 ~~side the Conservation Area can be seen or heard~~  
 18 ~~within the Conservation Area shall not preclude the~~  
 19 ~~activity or use outside the boundary of the Conserva-~~  
 20 ~~tion Area.~~

21 ~~(d) ACQUISITION OF LAND.—~~

22 ~~(1) IN GENERAL.—The Secretary may acquire~~  
 23 ~~non-Federal land within the boundaries of the Con-~~  
 24 ~~servation Area or the Wilderness only through pur-~~  
 25 ~~chase from a willing seller; exchange; or donation.~~

1           (2) MANAGEMENT.—Land acquired under para-  
 2           graph (1) shall be managed as part of the Conserva-  
 3           tion Area or the Wilderness, as applicable, in accord-  
 4           ance with this Act.

5           (3) CERTAIN CONSERVATION AREA EX-  
 6           CHANGES.—

7                   (A) IN GENERAL.—In order to protect and  
 8                   consolidate Federal land within the boundary of  
 9                   the Conservation Area and subject to subpara-  
 10                  graph (B), the Secretary may enter into an  
 11                  agreement with any owner of private land with-  
 12                  in the boundaries of the Conservation Area to  
 13                  exchange the private land for Federal land in  
 14                  the Conservation Area, if the Secretary deter-  
 15                  mines that the exchange would enhance the val-  
 16                  ues for which the Conservation Area is estab-  
 17                  lished.

18                  (B) CONDITIONS.—An exchange of land  
 19                  under subparagraph (A) shall—

20                   (i) be carried out consistent with any  
 21                   applicable laws (including regulations), in-  
 22                   cluding laws relating to appraisals and  
 23                   equal value exchanges; and

24                   (ii) be subject to—

25                   (I) valid existing rights; and

1 (H) any terms and conditions  
2 that the Secretary may require.

3 (c) FIRE, INSECT, INVASIVE SPECIES, AND DISEASE  
4 MANAGEMENT ACTIVITIES.—The Secretary may under-  
5 take such measures in the Conservation Area and Wilder-  
6 ness as are necessary to control and prevent fire, insects,  
7 invasive species, and diseases, in accordance with section  
8 4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1)) and  
9 any other applicable laws (including regulations) and Ex-  
10 ecutive orders.

11 (f) INTERPRETIVE FACILITIES OR SITES.—

12 (1) IN GENERAL.—The Secretary, in coopera-  
13 tion with any other public or private entities as the  
14 Secretary determines to be appropriate, may estab-  
15 lish minimal interpretive facilities or sites in or near  
16 the Conservation Area.

17 (2) REQUIREMENTS.—Any facilities or sites es-  
18 tablished under paragraph (1) shall be designed to  
19 protect the resources described in section 2(b).

20 (g) PUBLIC ACCESS.—The Secretary shall continue  
21 to provide private landowners reasonable access to  
22 inholdings in the Conservation Area.

23 (h) WATER RIGHTS.—

24 (1) FINDINGS.—Congress finds that—

1           ~~(A)~~ as of the date of enactment of this  
2 Act, no private conditional water rights are lo-  
3 cated in the Wilderness; and

4           ~~(B)~~ the boundaries of the Wilderness are  
5 drawn in a manner that does not include any  
6 portion of the Gunnison River in the Wilder-  
7 ness.

8           ~~(2)~~ EFFECT ON WATER RIGHTS.—Nothing in  
9 this Act—

10           ~~(A)~~ affects the use or allocation, in exist-  
11 ence on the date of enactment of this Act, of  
12 any water, water right, or interest in water;

13           ~~(B)~~ affects any vested absolute or decreed  
14 conditional water right in existence on the date  
15 of enactment of this Act, including any water  
16 right held by the United States;

17           ~~(C)~~ affects any interstate water compact in  
18 existence on the date of enactment of this Act;

19           ~~(D)~~ authorizes or imposes any new re-  
20 served Federal water rights;

21           ~~(E)~~ unreasonably limits access for mainte-  
22 nance, operation, modification, repair, or re-  
23 placement of facilities that are—

24                   ~~(i)~~ in existence as of the date of en-  
25 actment of this Act; and

(ii) associated with any water rights referred to in subparagraph (A) or (B); or  
 (F) shall be considered to be a relinquishment or reduction of any water rights reserved or appropriated by the United States in the State on or before the date of the enactment of this Act.

(3) EFFECT ON WATER QUALITY DESIGNATIONS.—The designation of the Conservation Area and Wilderness by this Act shall not impose or cause to be imposed on any stream in, or upstream of, the Conservation Area or Wilderness any water quality designation that is more stringent than the water quality designation applicable to the stream in existence on the date of enactment of this Act.

(4) WILDERNESS WATER RIGHTS.—

(A) IN GENERAL.—The Secretary shall ensure that any water rights within the Wilderness required to fulfill the purposes of the Wilderness are secured in accordance with subparagraphs (B) through (G).

(B) STATE LAW.—

(i) PROCEDURAL REQUIREMENTS.—  
 Any water rights for which the Secretary pursues adjudication shall be appropriated;

1 adjudicated, changed, and administered in  
 2 accordance with the procedural require-  
 3 ments and priority system of State law.

4 (ii) ESTABLISHMENT OF WATER  
 5 RIGHTS.—

6 (I) IN GENERAL.—Except as pro-  
 7 vided in subclause (II), the purposes  
 8 and other substantive characteristics  
 9 of the water rights pursued under this  
 10 paragraph shall be established in ac-  
 11 cordance with State law.

12 (II) EXCEPTION.—Notwith-  
 13 standing subclause (I) and in accord-  
 14 ance with this Act, the Secretary may  
 15 appropriate and seek adjudication of  
 16 water rights to maintain surface water  
 17 levels and stream flows on and across  
 18 the Wilderness to fulfill the purposes  
 19 of the Wilderness.

20 (C) DEADLINE.—The Secretary shall  
 21 promptly, but not earlier than January 2009,  
 22 appropriate the water rights required to fulfill  
 23 the purposes of the Wilderness.

24 (D) REQUIRED DETERMINATION.—The  
 25 Secretary shall not pursue adjudication for any

1 instream flow water rights unless the Secretary  
 2 makes a determination pursuant to subpara-  
 3 graph (E)(ii) or (F).

4 ~~(E)~~ COOPERATIVE ENFORCEMENT.—

5 (i) IN GENERAL.—The Secretary shall  
 6 not pursue adjudication of any Federal  
 7 instream flow water rights established  
 8 under this paragraph if—

9 ~~(I)~~ the Secretary determines,  
 10 upon adjudication of the water rights  
 11 by the Colorado Water Conservation  
 12 Board, that the Board holds water  
 13 rights sufficient in priority, amount,  
 14 and timing to fulfill the purposes of  
 15 this Act; and

16 ~~(II)~~ the Secretary has entered  
 17 into a perpetual agreement with the  
 18 Colorado Water Conservation Board  
 19 to ensure full exercise, protection, and  
 20 enforcement of the State water rights  
 21 within the Wilderness to reliably fulfill  
 22 the purposes of this Act.

23 (ii) ADJUDICATION.—If the Secretary  
 24 determines that the provisions of clause (i)  
 25 have not been met, the Secretary shall ad-

1           judicate and exercise any Federal water  
2           rights required to fulfill the purposes of  
3           the Wilderness in accordance with this  
4           paragraph.

5           (F) INSUFFICIENT WATER RIGHTS.—If the  
6           Colorado Water Conservation Board modifies  
7           the instream flow water rights obtained under  
8           subparagraph (E) to such a degree that the  
9           Secretary determines that water rights held by  
10          the State are insufficient to fulfill the purposes  
11          of this Act, the Secretary shall adjudicate and  
12          exercise Federal water rights required to fulfill  
13          the purposes of this Act in accordance with sub-  
14          paragraph (B).

15          (G) FAILURE TO COMPLY.—The Secretary  
16          shall promptly act to exercise and enforce the  
17          water rights described in subparagraph (E) if  
18          the Secretary determines that—

19               (i) the State is not exercising its  
20               water rights consistent with subparagraph  
21               (E)(i)(I); or

22               (ii) the agreement described in sub-  
23               paragraph (E)(i)(II) is not fulfilled or com-  
24               plied with sufficiently to fulfill the pur-  
25               poses of this Act.



1           ~~(5) WATER RESOURCE FACILITY.—~~

2                   ~~(A) IN GENERAL.—Notwithstanding any~~  
3                   ~~other provision of law and subject to subpara-~~  
4                   ~~graph (B), beginning on the date of enactment~~  
5                   ~~of this Act, neither the President nor any other~~  
6                   ~~officer, employee, or agent of the United States~~  
7                   ~~shall fund, assist, authorize, or issue a license~~  
8                   ~~or permit for development of any new irrigation~~  
9                   ~~and pumping facility, reservoir, water conserva-~~  
10                  ~~tion work, aqueduct, canal, ditch, pipeline, well,~~  
11                  ~~hydropower project, transmission, other ancil-~~  
12                  ~~lary facility, or other water, diversion, storage,~~  
13                  ~~or carriage structure in the Wilderness.~~

14                  ~~(B) STOCK WATERING PONDS.—The Sec-~~  
15                  ~~retary may allow construction of new livestock~~  
16                  ~~watering facilities within the Wilderness if the~~  
17                  ~~facilities—~~

18                         ~~(i) would result in no impairment to~~  
19                         ~~the characteristics, values, and purposes of~~  
20                         ~~the Wilderness greater than that described~~  
21                         ~~in the Final Wilderness Environmental Im-~~  
22                         ~~pact Statement for the Grand Junction~~  
23                         ~~Resource Area dated November 1989; and~~

1                   (ii) would provide for the protection  
2                   and improved management of Wilderness  
3                   resources.

4           (6) CONSERVATION AREA WATER RIGHTS.—  
5   With respect to water within the Conservation Area,  
6   nothing in this Act—

7                   (A) authorizes any Federal agency to ap-  
8                   propriate or otherwise acquire any water right  
9                   on the mainstem of the Gunnison River; or

10                   (B) prevents the State from appropriating  
11                   or acquiring; or requires the State to appro-  
12                   priate or acquire; an instream flow water right  
13                   on the mainstem of the Gunnison River.

14           (7) WILDERNESS BOUNDARIES ALONG GUNNI-  
15   SON RIVER.—

16                   (A) IN GENERAL.—In areas in which the  
17                   Gunnison River is used as a reference for defin-  
18                   ing the boundary of the Wilderness, the bound-  
19                   ary shall—

20                           (i) be located at the edge of the river;

21                           and

22                           (ii) change according to the river  
23                           level.

24                   (B) EXCLUSION FROM WILDERNESS.—Re-  
25   gardless of the level of the Gunnison River, no

1           portion of the Gunnison River is included in the  
2           Wilderness area.

3           (i) ~~HUNTING, TRAPPING, AND FISHING.~~—Nothing in  
4 this Act diminishes the jurisdiction of the State with re-  
5 spect to fish and wildlife management, including regula-  
6 tion of hunting and fishing, on public land within the Con-  
7 servation Area.

8           (j) ~~LITTLE DOMINGUEZ CREEK ACCESS.~~—Nothing in  
9 this Act affects—

10           (1) the letter of agreement between the Bureau  
11 of Land Management and Mr. Billyie Rambo, dated  
12 September 28, 1988; or

13           (2) the life estate described in the letter of  
14 agreement.

15 **SEC. 8. MANAGEMENT PLAN.**

16           (a) ~~IN GENERAL.~~—Not later than 3 years after the  
17 date of enactment of this Act, the Secretary shall develop  
18 a comprehensive management plan for the long-range pro-  
19 tection and management of the Conservation Area.

20           (b) ~~PURPOSES.~~—The management plan shall—

21           (1) describe the appropriate uses and manage-  
22 ment of the Conservation Area;

23           (2) be developed with extensive public input;

1           ~~(3)~~ take into consideration any information de-  
 2           veloped in studies of the land within the Conserva-  
 3           tion Area; and

4           ~~(4)~~ include a comprehensive travel management  
 5           plan.

6 **SEC. 9. ADVISORY COUNCIL.**

7           ~~(a) ESTABLISHMENT.~~—Not later than 180 days after  
 8           the date of enactment of this Act, the Secretary shall es-  
 9           tablish an advisory council, to be known as the  
 10          ~~“Dominguez-Escalante National Conservation Area Advi-~~  
 11          ~~sory Council”.~~

12          ~~(b) DUTIES.~~—The Council shall advise the Secretary  
 13          with respect to the preparation and implementation of the  
 14          management plan.

15          ~~(c) APPLICABLE LAW.~~—The Council shall be subject  
 16          to—

17                 ~~(1) the Federal Advisory Committee Act (5~~  
 18                 ~~U.S.C. App.); and~~

19                 ~~(2) the Federal Land Policy and Management~~  
 20                 ~~Act of 1976 (43 U.S.C. 1701 et seq.).~~

21          ~~(d) MEMBERS.~~—The Council shall include 10 mem-  
 22          bers to be appointed by the Secretary, of whom, to the  
 23          extent practicable—

1           ~~(1) 1~~ member shall be appointed after consid-  
 2           ering the recommendations of the Mesa County  
 3           Commission;

4           ~~(2) 1~~ member shall be appointed after consid-  
 5           ering the recommendations of the Montrose County  
 6           Commission;

7           ~~(3) 1~~ member shall be appointed after consid-  
 8           ering the recommendations of the Delta County  
 9           Commission;

10          ~~(4) 1~~ member shall be appointed after consid-  
 11          ering the recommendations of the permittees holding  
 12          grazing allotments within the Conservation Area or  
 13          the Wilderness; and

14          ~~(5) 5~~ members shall reside in, or within reason-  
 15          able proximity to, Mesa County, Delta County, or  
 16          Montrose County, Colorado, with backgrounds that  
 17          reflect—

18                 ~~(A) the purposes for which the Conserva-~~  
 19                 tion Area or Wilderness was established; and

20                 ~~(B) the interests of the stakeholders that~~  
 21                 are affected by the planning and management  
 22                 of the Conservation Area and Wilderness.

23 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

24          There are authorized to be appropriated such sums  
 25          as are necessary to carry out this Act.

1 **SECTION 1. SHORT TITLE.**

2       *This Act may be cited as the “Dominguez-Escalante*  
 3 *National Conservation Area and Dominguez Canyon Wil-*  
 4 *derness Area Act”.*

5 **SEC. 2. DEFINITIONS.**

6       *In this Act:*

7           (1) **CONSERVATION AREA.**—*The term “Conserva-*  
 8 *tion Area” means the Dominguez-Escalante National*  
 9 *Conservation Area established by section 3(a)(1).*

10          (2) **COUNCIL.**—*The term “Council” means the*  
 11 *Dominguez-Escalante National Conservation Area*  
 12 *Advisory Council established under section 8.*

13          (3) **MANAGEMENT PLAN.**—*The term “manage-*  
 14 *ment plan” means the management plan developed*  
 15 *under section 7.*

16          (4) **MAP.**—*The term “Map” means the map enti-*  
 17 *tled “Dominguez-Escalante National Conservation*  
 18 *Area” and dated September 10, 2008.*

19          (5) **SECRETARY.**—*The term “Secretary” means*  
 20 *the Secretary of the Interior.*

21          (6) **STATE.**—*The term “State” means the State*  
 22 *of Colorado.*

23          (7) **WILDERNESS.**—*The term “Wilderness”*  
 24 *means the Dominguez Canyon Wilderness Area des-*  
 25 *ignated by section 4(a).*

1 **SEC. 3. DOMINGUEZ-ESCALANTE NATIONAL CONSERVATION**

2 **AREA.**

3 (a) *ESTABLISHMENT.*—

4 (1) *IN GENERAL.*—*There is established the*  
5 *Dominguez-Escalante National Conservation Area in*  
6 *the State.*

7 (2) *AREA INCLUDED.*—*The Conservation Area*  
8 *shall consist of approximately 209,600 acres of public*  
9 *land, as generally depicted on the Map.*

10 (b) *PURPOSES.*—*The purposes of the Conservation*  
11 *Area are to conserve and protect for the benefit and enjoy-*  
12 *ment of present and future generations—*

13 (1) *the unique and important resources and val-*  
14 *ues of the land, including the geological, cultural, ar-*  
15 *chaeological, paleontological, natural, scientific, rec-*  
16 *reational, wilderness, wildlife, riparian, historical,*  
17 *educational, and scenic resources of the public land;*  
18 *and*

19 (2) *the water resources of area streams, based on*  
20 *seasonally available flows, that are necessary to sup-*  
21 *port aquatic, riparian, and terrestrial species and*  
22 *communities.*

23 (c) *MANAGEMENT.*—

24 (1) *IN GENERAL.*—*The Secretary shall manage*  
25 *the Conservation Area—*

1           (A) as a component of the National Land-  
2       scape Conservation System;

3           (B) in a manner that conserves, protects,  
4       and enhances the resources and values of the  
5       Conservation Area described in subsection (b);  
6       and

7           (C) in accordance with—

8               (i) the Federal Land Policy and Man-  
9       agement Act of 1976 (43 U.S.C. 1701 et  
10      seq.);

11              (ii) this Act; and

12              (iii) any other applicable laws.

13       (2) *USES.*—

14           (A) *IN GENERAL.*—The Secretary shall  
15       allow only such uses of the Conservation Area as  
16       the Secretary determines would further the pur-  
17       poses for which the Conservation Area is estab-  
18       lished.

19           (B) *USE OF MOTORIZED VEHICLES.*—

20               (i) *IN GENERAL.*—Except as provided  
21       in clauses (ii) and (iii), use of motorized ve-  
22       hicles in the Conservation Area shall be al-  
23       lowed—

24                       (I) before the effective date of the  
25       management plan, only on roads and



1                   trails designated for use of motor vehi-  
 2                   cles in the management plan that ap-  
 3                   plies on the date of the enactment of  
 4                   this Act to the public land in the Con-  
 5                   servation Area; and

6                   (II) after the effective date of the  
 7                   management plan, only on roads and  
 8                   trails designated in the management  
 9                   plan for the use of motor vehicles.

10                  (ii) *ADMINISTRATIVE AND EMERGENCY*  
 11                  *RESPONSE USE.*—Clause (i) shall not limit  
 12                  the use of motor vehicles in the Conservation  
 13                  Area for administrative purposes or to re-  
 14                  spond to an emergency.

15                  (iii) *LIMITATION.*—This subparagraph  
 16                  shall not apply to the Wilderness.

17 **SEC. 4. DOMINGUEZ CANYON WILDERNESS AREA.**

18                  (a) *IN GENERAL.*—In accordance with the Wilderness  
 19                  Act (16 U.S.C. 1131 et seq.), the approximately 66,280  
 20                  acres of public land in Mesa, Montrose, and Delta Counties,  
 21                  Colorado, as generally depicted on the Map, is designated  
 22                  as wilderness and as a component of the National Wilder-  
 23                  ness Preservation System, to be known as the “Dominguez  
 24                  Canyon Wilderness Area”.

1       (b) *ADMINISTRATION OF WILDERNESS.*—*The Wilder-*  
 2 *ness shall be managed by the Secretary in accordance with*  
 3 *the Wilderness Act (16 U.S.C. 1131 et seq.) and this Act,*  
 4 *except that—*

5           (1) *any reference in the Wilderness Act to the ef-*  
 6 *fective date of that Act shall be considered to be a ref-*  
 7 *erence to the date of enactment of this Act; and*

8           (2) *any reference in the Wilderness Act to the*  
 9 *Secretary of Agriculture shall be considered to be a*  
 10 *reference to the Secretary of the Interior.*

11 **SEC. 5. MAPS AND LEGAL DESCRIPTIONS.**

12       (a) *IN GENERAL.*—*As soon as practicable after the*  
 13 *date of enactment of this Act, the Secretary shall file a map*  
 14 *and a legal description of the Conservation Area and the*  
 15 *Wilderness with—*

16           (1) *the Committee on Energy and Natural Re-*  
 17 *sources of the Senate; and*

18           (2) *the Committee on Natural Resources of the*  
 19 *House of Representatives.*

20       (b) *FORCE AND EFFECT.*—*The Map and legal descrip-*  
 21 *tions filed under subsection (a) shall have the same force*  
 22 *and effect as if included in this Act, except that the Sec-*  
 23 *retary may correct clerical and typographical errors in the*  
 24 *Map and legal descriptions.*

1       (c) *PUBLIC AVAILABILITY.*—*The Map and legal de-*  
 2 *scriptions filed under subsection (a) shall be available for*  
 3 *public inspection in the appropriate offices of the Bureau*  
 4 *of Land Management.*

5       **SEC. 6. MANAGEMENT OF CONSERVATION AREA AND WIL-**  
 6                               **DERNESS.**

7       (a) *WITHDRAWAL.*—*Subject to valid existing rights, all*  
 8 *Federal land within the Conservation Area and the Wilder-*  
 9 *ness and all land and interests in land acquired by the*  
 10 *United States within the Conservation Area or the Wilder-*  
 11 *ness is withdrawn from—*

12               (1) *all forms of entry, appropriation, or disposal*  
 13 *under the public land laws;*

14               (2) *location, entry, and patent under the mining*  
 15 *laws; and*

16               (3) *operation of the mineral leasing, mineral*  
 17 *materials, and geothermal leasing laws.*

18       (b) *GRAZING.*—

19               (1) *GRAZING IN CONSERVATION AREA.*—*Except*  
 20 *as provided in paragraph (2), the Secretary shall*  
 21 *issue and administer any grazing leases or permits in*  
 22 *the Conservation Area in accordance with the laws*  
 23 *(including regulations) applicable to the issuance and*  
 24 *administration of such leases and permits on other*

1       *land under the jurisdiction of the Bureau of Land*  
 2       *Management.*

3               (2) *GRAZING IN WILDERNESS.*—*The grazing of*  
 4       *livestock in the Wilderness, if established as of the*  
 5       *date of enactment of this Act, shall be permitted to*  
 6       *continue—*

7                       (A) *subject to any reasonable regulations,*  
 8                       *policies, and practices that the Secretary deter-*  
 9                       *mines to be necessary; and*

10                      (B) *in accordance with—*

11                               (i) *section 4(d)(4) of the Wilderness*  
 12                               *Act (16 U.S.C. 1133(d)(4)); and*

13                               (ii) *the guidelines set forth in Appen-*  
 14                               *dix A of the report of the Committee on In-*  
 15                               *terior and Insular Affairs of the House of*  
 16                               *Representatives accompanying H.R. 2570 of*  
 17                               *the 101st Congress (H. Rept. 101–405).*

18       (c) *NO BUFFER ZONES.*—

19               (1) *IN GENERAL.*—*Nothing in this Act creates a*  
 20       *protective perimeter or buffer zone around the Con-*  
 21       *servation Area.*

22               (2) *ACTIVITIES OUTSIDE CONSERVATION AREA.*—  
 23       *The fact that an activity or use on land outside the*  
 24       *Conservation Area can be seen or heard within the*

1       *Conservation Area shall not preclude the activity or*  
 2       *use outside the boundary of the Conservation Area.*

3       *(d) ACQUISITION OF LAND.—*

4               *(1) IN GENERAL.—The Secretary may acquire*  
 5       *non-Federal land within the boundaries of the Con-*  
 6       *servation Area or the Wilderness only through ex-*  
 7       *change, donation, or purchase from a willing seller,.*

8               *(2) MANAGEMENT.—Land acquired under para-*  
 9       *graph (1) shall—*

10               *(A) become part of the Conservation Area*  
 11       *and, if applicable, the Wilderness; and*

12               *(B) be managed in accordance with this Act*  
 13       *and any other applicable laws.*

14       *(e) FIRE, INSECTS, AND DISEASES.—Subject to such*  
 15       *terms and conditions as the Secretary determines to be de-*  
 16       *sirable and appropriate, the Secretary may undertake such*  
 17       *measures as are necessary to control fire, insects, and dis-*  
 18       *eases—*

19               *(1) in the Wilderness, in accordance with section*  
 20       *4(d)(1) of the Wilderness Act (16 U.S.C. 1133(d)(1));*  
 21       *and*

22               *(2) except as provided in paragraph (1), in the*  
 23       *Conservation Area in accordance with this Act and*  
 24       *any other applicable laws.*

1       (f) *ACCESS.—The Secretary shall continue to provide*  
 2 *private landowners adequate access to inholdings in the*  
 3 *Conservation Area.*

4       (g) *INVASIVE SPECIES AND NOXIOUS WEEDS.—In ac-*  
 5 *cordance with any applicable laws and subject to such*  
 6 *terms and conditions as the Secretary determines to be de-*  
 7 *sirable and appropriate, the Secretary may prescribe meas-*  
 8 *ures to control nonnative invasive plants and noxious weeds*  
 9 *within the Conservation Area.*

10       (h) *WATER RIGHTS.—*

11           (1) *EFFECT.—Nothing in this Act—*

12                   (A) *affects the use or allocation, in existence*  
 13 *on the date of enactment of this Act, of any*  
 14 *water, water right, or interest in water;*

15                   (B) *affects any vested absolute or decreed*  
 16 *conditional water right in existence on the date*  
 17 *of enactment of this Act, including any water*  
 18 *right held by the United States;*

19                   (C) *affects any interstate water compact in*  
 20 *existence on the date of enactment of this Act;*

21                   (D) *authorizes or imposes any new reserved*  
 22 *Federal water rights; or*

23                   (E) *shall be considered to be a relinquish-*  
 24 *ment or reduction of any water rights reserved*  
 25 *or appropriated by the United States in the*

1       *State on or before the date of enactment of this*  
 2       *Act.*

3       (2) *WILDERNESS WATER RIGHTS.*—

4               (A) *IN GENERAL.*—*The Secretary shall en-*  
 5       *sure that any water rights within the Wilderness*  
 6       *required to fulfill the purposes of the Wilderness*  
 7       *are secured in accordance with subparagraphs*  
 8       *(B) through (G).*

9               (B) *STATE LAW.*—

10               (i) *PROCEDURAL REQUIREMENTS.*—  
 11       *Any water rights within the Wilderness for*  
 12       *which the Secretary pursues adjudication*  
 13       *shall be adjudicated, changed, and adminis-*  
 14       *tered in accordance with the procedural re-*  
 15       *quirements and priority system of State*  
 16       *law.*

17               (ii) *ESTABLISHMENT OF WATER*  
 18       *RIGHTS.*—

19               (I) *IN GENERAL.*—*Except as pro-*  
 20       *vided in subclause (II), the purposes*  
 21       *and other substantive characteristics of*  
 22       *the water rights pursued under this*  
 23       *paragraph shall be established in ac-*  
 24       *cordance with State law.*

1                   (II)           *EXCEPTION.—Notwith-*  
 2                   *standing subclause (I) and in accord-*  
 3                   *ance with this Act, the Secretary may*  
 4                   *appropriate and seek adjudication of*  
 5                   *water rights to maintain surface water*  
 6                   *levels and stream flows on and across*  
 7                   *the Wilderness to fulfill the purposes of*  
 8                   *the Wilderness.*

9                   (C)   *DEADLINE.—The Secretary shall*  
 10                  *promptly, but not earlier than January 2009,*  
 11                  *appropriate the water rights required to fulfill*  
 12                  *the purposes of the Wilderness.*

13                  (D) *REQUIRED DETERMINATION.—The Sec-*  
 14                  *retary shall not pursue adjudication for any*  
 15                  *instream flow water rights unless the Secretary*  
 16                  *makes a determination pursuant to subpara-*  
 17                  *graph (E)(ii) or (F).*

18                  (E) *COOPERATIVE ENFORCEMENT.—*

19                       (i) *IN GENERAL.—The Secretary shall*  
 20                       *not pursue adjudication of any Federal*  
 21                       *instream flow water rights established under*  
 22                       *this paragraph if—*

23                               (I) *the Secretary determines, upon*  
 24                               *adjudication of the water rights by the*  
 25                               *Colorado Water Conservation Board,*



1                   that the Board holds water rights suffi-  
 2                   cient in priority, amount, and timing  
 3                   to fulfill the purposes of the Wilderness;  
 4                   and

5                   (II) the Secretary has entered into  
 6                   a perpetual agreement with the Colo-  
 7                   rado Water Conservation Board to en-  
 8                   sure the full exercise, protection, and  
 9                   enforcement of the State water rights  
 10                  within the Wilderness to reliably fulfill  
 11                  the purposes of the Wilderness.

12                  (ii) ADJUDICATION.—If the Secretary  
 13                  determines that the provisions of clause (i)  
 14                  have not been met, the Secretary shall adju-  
 15                  dicate and exercise any Federal water rights  
 16                  required to fulfill the purposes of the Wil-  
 17                  derness in accordance with this paragraph.

18                  (F) INSUFFICIENT WATER RIGHTS.—If the  
 19                  Colorado Water Conservation Board modifies the  
 20                  instream flow water rights obtained under sub-  
 21                  paragraph (E) to such a degree that the Sec-  
 22                  retary determines that water rights held by the  
 23                  State are insufficient to fulfill the purposes of the  
 24                  Wilderness, the Secretary shall adjudicate and  
 25                  exercise Federal water rights required to fulfill

1        *the purposes of the Wilderness in accordance*  
 2        *with subparagraph (B).*

3                *(G) FAILURE TO COMPLY.—The Secretary*  
 4        *shall promptly act to exercise and enforce the*  
 5        *water rights described in subparagraph (E) if*  
 6        *the Secretary determines that—*

7                        *(i) the State is not exercising its water*  
 8                        *rights consistent with subparagraph*  
 9                        *(E)(i)(I); or*

10                      *(ii) the agreement described in sub-*  
 11                      *paragraph (E)(i)(II) is not fulfilled or com-*  
 12                      *plied with sufficiently to fulfill the purposes*  
 13                      *of the Wilderness.*

14        *(3) WATER RESOURCE FACILITY.—*

15                *(A) IN GENERAL.—Notwithstanding any*  
 16        *other provision of law and subject to subpara-*  
 17        *graph (B), beginning on the date of enactment of*  
 18        *this Act, neither the President nor any other offi-*  
 19        *cer, employee, or agent of the United States shall*  
 20        *fund, assist, authorize, or issue a license or per-*  
 21        *mit for the development of any new irrigation*  
 22        *and pumping facility, reservoir, water conserva-*  
 23        *tion work, aqueduct, canal, ditch, pipeline, well,*  
 24        *hydropower project, transmission, other ancillary*

1        *facility, or other water, diversion, storage, or*  
 2        *carriage structure in the Wilderness.*

3                (B) *EXCEPTION.—Notwithstanding sub-*  
 4        *paragraph (A), the Secretary may allow con-*  
 5        *struction of new livestock watering facilities*  
 6        *within the Wilderness in accordance with—*

7                (i) *section 4(d)(4) of the Wilderness*  
 8        *Act (16 U.S.C. 1133(d)(4)); and*

9                (ii) *the guidelines set forth in Appen-*  
 10        *dix A of the report of the Committee on In-*  
 11        *terior and Insular Affairs of the House of*  
 12        *Representatives accompanying H.R. 2570 of*  
 13        *the 101st Congress (H. Rept. 101–405).*

14                (4) *CONSERVATION AREA WATER RIGHTS.—With*  
 15        *respect to water within the Conservation Area, noth-*  
 16        *ing in this Act—*

17                (A) *authorizes any Federal agency to ap-*  
 18        *propriate or otherwise acquire any water right*  
 19        *on the mainstem of the Gunnison River; or*

20                (B) *prevents the State from appropriating*  
 21        *or acquiring, or requires the State to appro-*  
 22        *priate or acquire, an instream flow water right*  
 23        *on the mainstem of the Gunnison River.*

24                (5) *WILDERNESS BOUNDARIES ALONG GUNNISON*  
 25        *RIVER.—*

1                   (A) *IN GENERAL.*—*In areas in which the*  
 2                   *Gunnison River is used as a reference for defin-*  
 3                   *ing the boundary of the Wilderness, the boundary*  
 4                   *shall—*

5                               (i) *be located at the edge of the river;*

6                               *and*

7                               (ii) *change according to the river level.*

8                   (B) *EXCLUSION FROM WILDERNESS.*—*Re-*  
 9                   *gardless of the level of the Gunnison River, no*  
 10                   *portion of the Gunnison River is included in the*  
 11                   *Wilderness.*

12               (i) *EFFECT.*—*Nothing in this Act—*

13                               (1) *diminishes the jurisdiction of the State with*  
 14                   *respect to fish and wildlife in the State; or*

15                               (2) *imposes any Federal water quality standard*  
 16                   *upstream of the Conservation Area or within the*  
 17                   *mainstem of the Gunnison River that is more restric-*  
 18                   *tive than would be applicable had the Conservation*  
 19                   *Area not been established.*

20               (j) *VALID EXISTING RIGHTS.*—*The designation of the*  
 21                   *Conservation Area and Wilderness is subject to valid rights*  
 22                   *in existence on the date of enactment of this Act.*

23   **SEC. 7. MANAGEMENT PLAN.**

24               (a) *IN GENERAL.*—*Not later than 3 years after the*  
 25                   *date of enactment of this Act, the Secretary shall develop*

1 *a comprehensive management plan for the long-term protec-*  
 2 *tion and management of the Conservation Area.*

3 *(b) PURPOSES.—The management plan shall—*

4 *(1) describe the appropriate uses and manage-*  
 5 *ment of the Conservation Area;*

6 *(2) be developed with extensive public input;*

7 *(3) take into consideration any information de-*  
 8 *veloped in studies of the land within the Conservation*  
 9 *Area; and*

10 *(4) include a comprehensive travel management*  
 11 *plan.*

12 **SEC. 8. ADVISORY COUNCIL.**

13 *(a) ESTABLISHMENT.—Not later than 180 days after*  
 14 *the date of enactment of this Act, the Secretary shall estab-*  
 15 *lish an advisory council, to be known as the “Dominguez-*  
 16 *Escalante National Conservation Area Advisory Council”.*

17 *(b) DUTIES.—The Council shall advise the Secretary*  
 18 *with respect to the preparation and implementation of the*  
 19 *management plan.*

20 *(c) APPLICABLE LAW.—The Council shall be subject*  
 21 *to—*

22 *(1) the Federal Advisory Committee Act (5*  
 23 *U.S.C. App.); and*

24 *(2) the Federal Land Policy and Management*  
 25 *Act of 1976 (43 U.S.C. 1701 et seq.).*

1       (d) *MEMBERS.*—*The Council shall include 10 members*  
 2 *to be appointed by the Secretary, of whom, to the extent*  
 3 *practicable—*

4           (1) *1 member shall be appointed after consid-*  
 5 *ering the recommendations of the Mesa County Com-*  
 6 *mission;*

7           (2) *1 member shall be appointed after consid-*  
 8 *ering the recommendations of the Montrose County*  
 9 *Commission;*

10          (3) *1 member shall be appointed after consid-*  
 11 *ering the recommendations of the Delta County Com-*  
 12 *mission;*

13          (4) *1 member shall be appointed after consid-*  
 14 *ering the recommendations of the permittees holding*  
 15 *grazing allotments within the Conservation Area or*  
 16 *the Wilderness; and*

17          (5) *5 members shall reside in, or within reason-*  
 18 *able proximity to, Mesa County, Delta County, or*  
 19 *Montrose County, Colorado, with backgrounds that re-*  
 20 *flect—*

21               (A) *the purposes for which the Conservation*  
 22 *Area or Wilderness was established; and*

23               (B) *the interests of the stakeholders that are*  
 24 *affected by the planning and management of the*  
 25 *Conservation Area and Wilderness.*

1       (e) *REPRESENTATION.*—*The Secretary shall ensure*  
2 *that the membership of the Council is fairly balanced in*  
3 *terms of the points of view represented and the functions*  
4 *to be performed by the Council.*

5       (f) *DURATION.*—*The Council shall terminate on the*  
6 *date that is 1 year from the date on which the management*  
7 *plan is adopted by the Secretary.*

8       **SEC. 9. AUTHORIZATION OF APPROPRIATIONS.**

9       *There are authorized to be appropriated such sums as*  
10 *are necessary to carry out this Act.*

Calendar No. 997

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> Session

**S. 3065**

**A BILL**

To establish the Dominguez-Escalante National  
Conservation Area and the Dominguez Canyon  
Wilderness Area.

SEPTEMBER 16, 2008

Reported with an amendment